

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 29 of 1988****For Approval and Signature:****HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT - Appellant(s)
Versus
MIRABEN H.THAKKAR & 1 - Defendant(s)

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Appearance :

MR SATYAM CHHAYA, AGP for Appellant(s) : 1,
MR DM THAKKAR for Defendant(s) : 1,
None for Defendant(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4
MR MG NAGARKAR for Defendant(s) : 2,
MR DU SHAH for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**Date : 09/04/2007****ORAL JUDGMENT**

1. The short facts of the case appears to be that
the Lands bearing Survey Nos.55 and 56

admeasuring 4 Hectre-30-68sq. Mtrs of Village Ganeshpur of Modasa Taluka were proposed to be acquired for public purpose for extension of industrial estate of Gujarat Industrial Development Corporation and thereafter the notification under Section 4 of the Act was published on 16.9.1982. The notification under Section 6 of the Act was published on 3.11.1983. The proceedings under Section 9 of the Act were initiated and thereafter the Land Acquisition Officer (hereinafter referred to as "LAO") passed the award. It may be stated that the claimant claimed the compensation at the rate of Rs.24,000/- per Bigha, but the LAO awarded compensation at the rate of Rs.20,000/- per hectre i.e. Rs.2/- per sq. mtrs. Being aggrieved by the compensation awarded by the LAO the dispute was raised and the matter was referred to the Reference Court for adjudication. The Reference Court after adjudication found the market value of the lands as that of Rs.8/- per sq. mtrs., and passed the award by additionally awarding the solatium at

the rate of 30% and interest at the rate of 12%. It is under these circumstances the present appeal before this Court by the State. It may also be recorded that the original claimants filed cross objections for enhancement of the compensation being Cross Objection No.2720/88.

2. Heard Mr.Chhaya, learned AGP for the appellant State and Mr.Thakkar, learned Counsel for the original claimant/respondent herein. Considered the record and proceedings.
3. On behalf of the State, it has been contended that the Reference Court has committed error in reducing the market value of the land at the rate of 33% only, keeping in view the small area of the sale instance of about 400 sq. mtrs as against the acquisition in the present case of about 40000 sq. mtrs. and it has been submitted that the Reference Court ought to have reduced the amount by 50% for arriving at the correct market value of the land in question. Therefore, it has been submitted that the amount awarded by the Reference Court deserves to be reduced.

4. Whereas on behalf of the original claimant it has been contended by Mr. Thakkar, learned Counsel that 33% is a correct reduction in comparison to the area under acquisition as applied by the Reference Court and there is no scope for further reduction of the amount than awarded by the Reference Court. However, it has also been submitted that the Reference Court has awarded lesser amount of compensation by reducing 50% of the price after making comparison of the Agricultural and Non-agricultural land. It has been submitted that the correct valuation of the agricultural land would be less by $\frac{1}{3}^{\text{rd}}$ i.e. 30% and not 50% as undertaken by the Reference Court. Therefore, the compensation deserves to be enhanced as per the submission made on behalf of the original claimants.

5. It appears from the record and proceedings read with the judgement of the Reference Court, that the Reference Court based on the sale instances, concluded that the sale instances of the land situated on another site of Ganeshpur shows the

price between Rs.4 to 7/- per sq. mtrs., whereas the price of the land situated near the acquired land in the year 1981 was between Rs.23/- to 25/- per sq. mtrs. The Reference Court thereafter found that considering the topography of the land and location the report of the valuer cannot be relied upon and the Reference Court proceeded on the basis that considering the sale instance of the adjoining land bearing Survey No.42/1 the price would be Rs.24.95 per sq. mtr. It appears that considering the special circumstances that the sale instance of the land bearing Survey No.42/1 was of Rs.431/- sq. mtr., whereas the land under acquisition was about Rs.40000/- sq. mtr., roughly 100 times the area, the deduction in the price is made of 33%. Such a method applied by the Reference Court cannot be said as on the circumstances totally extraneous to the record. Therefore, it cannot be said that if considering the larger area, the reduction is considered by the Reference Court at the rate of 33%, such an approach on the part of the Reference Court was unreasonable. If the

valuation made by the valuer is considered, it can be in the vicinity of Rs.20/- per sq. mtr., whereas the Reference Court has assessed the valuation at Rs.16.70 per sq. mtr., of the non-agricultural land. The aforesaid is coupled with the circumstances that while considering the reduction between the price of the non-agricultural and agricultural lands in comparison to 1/3rd reduction the Reference Court has considered 50% reduction. Therefore, even if the argument of the State is considered for the sake of examination, 50% of Rs.24.95 would come to Rs.12.47 and if 1/3rd price is reduced so as to trace the valuation of the agricultural land as against the price of the non-agricultural land, the figure would come to around Rs.8.31 per sq. mtr. As against the same, the Reference Court has concluded the price of the land as of Rs.8/- per sq. mtr. Even if the contention of the claimant is examined after taking into consideration the contention of the State, then in that case 50% of Rs.24.94 per sq. mtrs., would come to

Rs.12.47 and if $1/3^{\text{rd}}$ price is reduced for finding out the valuation of the agricultural land as against the value of non-agricultural land the price would come to around Rs.8.30. As against the same, the Reference Court has assessed the value as Rs.8/- per sq. mtr. Under these circumstances, I find that there is no much difference in the assessment made by the Reference Court if the contention of the either side is considered and examined. Hence, it appears that the market price assessed by the Reference Court at the rate of Rs.8/- per sq. mtr., is just and reasonable and the finding of the Reference Court in this regard does not deserve to be interfered with.

6. The Reference Court has awarded the statutory benefit of the enhancement in the price at the rate of 12% per annum on the awarded amount of compensation and the solatium at the rate of 30% and the interest at the rate of 9% for the first year and 15% for the subsequent years, which appears in accordance with Land Acquisition Act.

7. In view of the aforesaid observations and

discussions, the appeal as well as the cross objections are dismissed. No order as to costs. Decree accordingly.

09.4.2007

(Jayant Patel, J.)

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